

Remarks

In response to the Official Action dated October 12, 2007, Applicants submit herein a response to the action, including amendments to the claims and arguments in support of the patentability of the present invention.

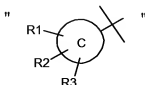
Examiner has noted that the present application does not contain an abstract of the disclosure as required under 37 CFR 1.71(b). Included herewith, Applicants provide the Abstract which appears on the front page of the corresponding published application WO 04/05284, along with appropriate instructions for amendment of the specification.

Claims 122-137 and 138-144 have been cancelled. New claims 145 – 151 are submitted herein to replace the cancelled claims. Basis for new claim 145 may be found in claim 138 which has now been cancelled. Basis for new claim 146 may be found in claim 141 which has now been cancelled. Basis for new claim 147 may be found in claim 141, which has now been cancelled, as well as Examples 611 and 613 of the specification. Basis for new claim 148 may be found in claim 141, which has now been cancelled and basis for new claim 149 may be found in Example 611 of the specification. Basis for new claims 150 and 151 may be found in claims 143 and 144, respectively, each of which has now been cancelled.

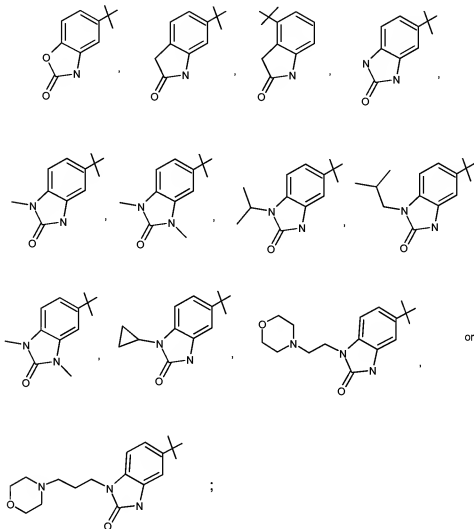
Rejections Under 35 U.S.C. §112

Claims 122-124 and 138-140 stand rejected under 35 U.S.C. §112, second paragraph as allegedly failing to particularly point out and distinctly claim the invention. Applicants respectfully submit that in view of the amendments to the claims submitted herein, the present rejection of Claims 122-124 and 138-140 under 35 U.S.C. §112, second paragraph has clearly been obviated.

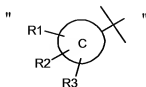
As noted, Claims 122-124 and 138-140 have been cancelled. Regarding Claims 138-140, Applicants respectfully submit that Examiner misconstrued the meaning and intent of the passage that defines the group given by the structure:



as a "benzofused heterocycle having a non-hydrogen substituent at at least one of R1-R3 wherein said benzofused heterocycle having a non-hydrogen substituent is given by the following



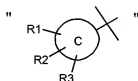
The specific substituted-benzofused rings provided above constitute particular values for the entire moiety given by the structure:



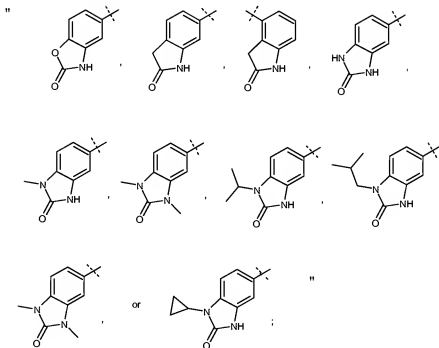
In other words, these substituted benzofused rings comprise the "C" ring in conjunction with the required non-hydrogen substituent at at least one of R1-R3. The specification provides support for Applicants construction of the terms in question. For example, at page 58, line 1-6 of the

specification there is provided examples of the "C" ring in the absence of any substituents at R1-R3. The values for R1-R3 as provided in the specification expressly include oxo, C1-C6alkyl, as well as C3-C7cycloalkyl. Furthermore, page 58, line 8 through the end of page 59 provides explicit examples of "benzofused heterocycle having a non-hydrogen substituent at at least one of R1-R3." Finally, page 30, line 16 through page 31, line 23 provides even further support for Applicants' construction of said terms.

While Applicants believe that the language of claims 138-140 met the requirements of 35 USC 112, second paragraph, Applicants have proposed further amendments as appearing in newly submitted claim 145 in an effort to expedite prosecution. As amended, claim 145 explicitly recites that the group:



represents one of the following structures:



Claims 122 and 138 also stand rejected under 35 U.S.C. 112, second paragraph as allegedly being indefinite for referring to the value "----" which does not appear in the structure of Formula I. Applicants have amended the structure of Formula I in the newly submitted claims to correct this typographical error to clearly depict the bond represented by

“- - - -”. Basis for this amendment may be found in the specification at page 7, lines 5-7 as well as original claim 37, now cancelled.

Claims 130, 131, 133, 141, 142, and 144 stand rejected under 35 U.S.C. 112, second paragraph as allegedly failing to particularly point and distinctly claim the invention for failing to show complete valences for the specific compounds claimed therein. In order to expedite prosecution, Applicants have amended the structures in the newly submitted claims as suggested by Examiner. Claims 130, 131, 133, 141, 142, and 144 also stand rejected under 35 U.S.C. 112, second paragraph as allegedly failing to particularly point and distinctly claim the invention for being drawn to compounds which the Examiner contends can not be further substituted with at least one non-hydrogen at R1, R2, or R3. While Applicants disagree with the Examiner's construction of the claim language in the independent claim (claim 138) from which the cited claims depend, Applicants submit that the newly submitted independent claim 145 (discussed supra) clearly obviates the present rejection.

Double Patenting:

Claims 122-127, 128, 129, 132, 138, 139, 140, and 142-144 stand provisionally rejected on the ground of non-statutory obviousness-type double patenting in view of Gavardinas et al. (co-pending application No. 10/576,761). Without admitting that any of the claims were properly rejected on the ground of obviousness-type double patenting, Applicants have amended the scope of the present invention by deleting the morpholinopropyl- and morpholinoethyl-substituted benzofuzed heterocycles from list of possible values for the substituted “C” ring in newly submitted claim 145. As currently amended, the present invention is limited to compounds which contain an oxo substituent on the benzofuzed ring, in addition to optional alkyl substituents. The claims, as amended, do not permit a benzofuzed structure bearing an amine-containing substituent. The compounds of Gavardinas et al., however, contain not only an oxo substituent on the benzimidazole ring, but also require a straight chain or cyclic amine group at the R3 position therein. Thus, claim 145 is clearly patentably distinct over the pending claims of the cited reference.

Applicants respectfully request entry of the present amendments and reconsideration of the present application in view of the discussion above. The Examiner is invited to contact the undersigned attorney should any questions arise as a result of the submission provided herein, or in the event examiner intends to issue any further objections or rejections to the pending claims.

Respectfully submitted,

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